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Governing Under Pressure: German Policy Making During the Coronavirus Crisis

JÖRG MICHAEL DOSTAL

Abstract

The global threat of the coronavirus pandemic has forced policy makers to react quickly with totally new policy-making approaches under conditions of uncertainty. This article focuses on such crisis-driven policy learning, examining how the experiences of China and South Korea as early responder states influenced the subsequent coronavirus crisis management in Germany. The first reaction of the German core executive was the quick concentration of decision-making power at the top of the political hierarchy. Asserting the prerogatives of the executive included the radical simplification of the relationship between politics, law and science. State actors took emergency measures by recourse to a single piece of legislation—the ‘infection protection law’ (*Infektionsschutzgesetz*)—overriding other elements of the legal order. They also limited the government’s use of scientific expertise to a small number of advisors, thereby cutting short debates about the appropriateness or otherwise of the government’s crisis measures. Finally, German actors failed to understand that some of the earlier Chinese and Korean responses required a precondition—namely public willingness to sacrifice privacy for public health—that is absent in the German case.

Keywords: China, coronavirus, Germany, policy learning, risk, South Korea

Introduction

THE NEW CORONAVIRUS (medical term: SARS-CoV-2/COVID-19) has challenged global policy making. Some features of the new politics of the virus might be comparable with earlier events: in terms of the medical puzzle, the HIV/Aids crisis of the early 1980s and, more recently, the SARS and MERS virus outbreaks occurring since 2002 and 2012 in a number of countries come to mind. Nevertheless, the current coronavirus pandemic is much more challenging: it includes medical, political and economic emergencies and connects each individual citizen with global risk society. Thus, the collapse of globalisation as we knew it in the spring of 2020 has revealed pre-existing shortcomings of our economic, political and moral norms in an era of permanent ecological crisis.

This article focuses on German public policy responses to the coronavirus crisis. It first presents some German political sociology approaches that are relevant in the

context of analysing coronavirus crisis management. The second section sketches how the coronavirus challenge triggered spontaneous policy learning across the globe, although the lessons learned in the early period (January to March) differed markedly from those acquired at later stages when reflection on the usefulness or otherwise of early policies set in. Section three zooms in on China and South Korea as early responders to the coronavirus pandemic, examining how the two countries became role models and influenced subsequent German policy making. The fourth section describes German coronavirus policy making under conditions of intense uncertainty about the nature of the problem, dramatic time pressures and competing demands for health and economic protection. Section five returns to the analytical focus on political sociology, examining how German political executives attempted to learn relevant policy lessons from elsewhere. It also looks at how their efforts to contain coronavirus-related risks produced new kinds of risk elsewhere. The conclusion

sums up lessons of German policy (mis-) learning during the coronavirus period.

The political sociology of coronavirus crisis management

German political sociologists offer some useful analytical concepts to understand coronavirus-related challenges. These concern the question of how states act under emergency conditions. The obvious starting point is Ulrich Beck's concept of a 'world risk society' underlining that more and more policy-making problems of our age encountered by individual states are global in scope and can only be addressed adequately by coordinated global efforts.¹ Perceiving risk on a global scale produces two contradictory responses in national policy making. On the one hand, the public's fear of risk grows further because delocalisation, incalculability, and absence of clear compensatory mechanisms all serve to highlight the weakness of risk-containing policies at the national level. On the other hand, the perception of global risk can also serve to empower individual states: a national government that promises to deal with 'threats to humanity' and claims to reduce citizens' exposure to risk based on precautionary principles might gain power resources that would not otherwise be available to it.² In fact, the coronavirus pandemic highlights how global risk perception can strengthen the discretionary power of national executives.

Dealing with similar questions, Niklas Luhmann's sociological 'systems theory' might explain how state executives are able to overcome barriers to political decision making. According to Luhmann, modern societies are characterised by their increasing functional differentiation into subfields. Crucially, the internal means of communication within each subfield become more important in comparison with any overarching logic of societal integration. Throughout his career, Luhmann wrote a series of monographs on what he considered major subfields of modern society, focussing in particular on political, economic and legal systems. Observing the different criteria for 'success' within each system (power, money, reputation, and so on), he stressed the fact that effective

communication between participants in different subfields became more and more difficult.³ Although Luhmann never wrote at length on 'the medicine of society', his highlighting of basic communication problems between different fields and systems—how can medical knowledge become a tool to create legitimacy for political decisions?—appears highly significant during the coronavirus crisis.⁴

A related problem is how politics and law interact and whether or not legal limits on state authority are maintained under conditions of severe crisis. Here, it is appropriate to recall Germany's earlier experiences with the collapse of the legal order during the Nazi period. In particular, Ernst Fraenkel's focus on distinguishing between the 'normative state' (*Normenstaat*), bound by written laws, and the 'prerogative state' (*Maßnahmenstaat*) remains analytically useful. According to Fraenkel, the latter manifestation of the state ignores written law as soon as an issue becomes defined as 'political'. This allows for direct state measures overriding the codified legal order and satisfying *ad hoc* demands by political controllers of the state.⁵ The point is not, of course, to compare contemporary Germany with the Nazi state. Rather, one must stress that modern versions of the 'prerogative state' might come about by accident—based on the 'good intentions' of an executive that feels pressured by an emergency situation to protect the public against an immediate danger.

Crucially, conflicts between politics and law as social systems might escalate in both directions, depending on which side is expanding at the expense of the other. For example, ongoing growth in the complexity and density of the legal order at various levels, including below and beyond the nation state, might decrease the ability of political actors to take decisions in an effective and timely manner. Such tensions could result in gridlock of both systems. A retired former chair of the German Federal Constitutional Court, Hans-Jürgen Papier, argued pre-coronavirus crisis that Germany's political system was in danger of giving up on enforcing existing laws. In procedural terms, this was, according to Papier, because of the chronic overload of the legal system resulting in unacceptable delays in legal

judgements. In substantive terms, he suggested that Germany's 'diesel scandal' (limits on car emissions had been legally mandated but had not been enforced), and the state's failure to deport legally rejected asylum seekers pointed to enforcement gaps, questioning the stability of the legal order. During the coronavirus pandemic, the same commentator has stressed that German politicians' single-minded focus on applying the 'infection protection law' (*Infektionsschutzgesetz*)—used to override other legal provisions—questions the basic individual freedoms outlined in the German constitution and the liberal order in general.⁶ In summary, pre-existing conflicts between political and legal decision making escalate further during the coronavirus crisis.

The coronavirus crisis and global policy learning

The coronavirus pandemic has triggered global policy debates under conditions of extreme uncertainty. Underestimating or overestimating the initial threat was a very real danger. Some followed the former approach ('it is just like the flu') while others followed the latter approach ('a totally unprecedented threat to humanity'). Policy learning therefore occurred on a trial-and-error basis, moving between these two extremes. While still trying to learn, actors could be mistaken more than once—such as in the case of European governments first underestimating the challenge, and then acting under the influence of fear bordering on panic, and turning to extreme measures without considering alternative options. Crucially, one must acknowledge that threat perceptions differed vastly along the timeline since the beginning of the pandemic and in different countries. The coronavirus crisis of February and March appeared to many as an existential threat, while the situation in April and May made some wonder whether the dangers had been vastly overstated. During the first period, the TV pictures from coronavirus hotspots such as Wuhan in China, Bergamo in Italy and New York City captured the public imagination. In the second period, increasing public awareness of empty hospitals in many OECD countries

and rising doubt about any direct correlation between coronavirus infections and fatalities shifted the public's perception. In the early period, policy learning was mostly spontaneous—copying coronavirus policies that seemed to work elsewhere.

To put it differently, what emerged was an unpremeditated world risk community. This community lacked any clear coordinating mechanisms and at times appeared to drift toward inter-state conflicts, such as during the global scramble for masks and personal protective equipment when some countries started to accuse others of foul play. Nevertheless, it was in certain respects a community: the coronavirus-related measures taken by OECD and non-OECD states appeared surprisingly similar and bypassed previous divergence in national policy-making styles. With the advantage of hindsight, it is only to be expected that many of the early crisis-managing policies will be found to have been irrelevant or even harmful.

Thus, future debate will certainly focus on how the coronavirus crisis differed from textbook expectations of pandemics. Namely, many medical specialists initially assumed that the infectious spread of the virus was nearly impossible to stop until a majority of the public had become infected (the so-called 'herd immunity' approach suggesting that people passing through an infection would gain immunity). It was further assumed that once such mass infection had run its course and around two thirds of the population had passed through an infectious episode, any further spread of the virus would end owing to a lack of remaining viable hosts. However, the actual experience of the coronavirus pandemic suggests at the moment of writing (late May 2020) that the virus is less easily transmitted than was initially assumed. Recent, more representative studies of infection rates further suggest that the share of people so far affected by the virus remains—even in former coronavirus hotspots—below 15 per cent of the population, and usually much lower. Moreover, many people who—according to test results—have been infected with coronavirus report that they never noticed any symptoms. In summary, future policy debates will largely concern economic, legal and social consequences of the coronavirus crisis management rather than the

initial medical puzzles. However, the next section looks back at the early period between January and March examining how the two most prominent early coronavirus responder states, China and South Korea, influenced subsequent German policy making.

Early responder states: China and South Korea

Prior to the coronavirus pandemic, German and other western policy makers were fairly ignorant about the dangers of pandemics, while their Arab, African, and Asian counterparts all had to deal with them as recently as during the 2002 SARS and 2012 and 2015 MERS outbreaks. Such earlier experiences are a major explanatory factor for the relative success or failure of individual countries during the current coronavirus crisis. China and South Korea differ in terms of their respective political systems, yet they share strong bureaucratic capabilities in terms of implementing public policies and provide near-universal access to healthcare for their citizens. Both countries enjoy strategic autonomy in information and communication technologies (ICT). Citizens are socialised to access public services via their smartphones and a large share of public and private sector business takes place online. In addition, China is a major and sometimes leading manufacturer of medical and health-related products, including personal protective equipment. Although China's per capita spending on healthcare is fairly low and the coverage and quality of medical services differ between urban and rural areas, the country nevertheless enjoys strong capabilities in terms of reacting to medical emergencies. In particular, Communist Party and neighbourhood committees are able to enforce policy at the local level and the military can provide logistical and medical emergency support at short notice.

In South Korea, near-universal access to high quality healthcare and affordable medical insurance has brought down differences in life expectancy relating to social class in comparison with other OECD countries. Moreover, South Korea's progressive liberal President Moon Jae-in was voted into office

in 2017 in reaction to the poor track record of the previous conservative administration in the field of public safety (most notably the sinking of the Sewol ferry in 2014 which killed 304 South Korean citizens, including 250 students). Thus, the authority of President Moon clearly depends on the ability of his administration to demonstrate that lessons have been learned from previous failure. Another significant explanatory factor shared by China and South Korea is that both countries have comprehensively rationalised their health services: Chinese and South Korean medical doctors see many more patients per day compared with their western counterparts, and their work is supported by a larger number of nursing staff and ICT-based medical diagnostic procedures which were useful in reacting to the coronavirus pandemic.

The remainder of this section briefly sketches Chinese and South Korean major responses to the coronavirus epidemic. (Similar policies have also been applied in smaller East Asian jurisdictions such as Taiwan, Hong Kong and Singapore.) Initially, local Chinese authorities in the city of Wuhan reacted with delay to the appearance of a new type of infectious disease. They did not use official chains of communication with the central government, but instead tried to solve the problem at the local level. Following this delay, a cluster of pneumonia cases of unknown origin was reported to the Chinese National Health Commission on 30 December 2019. Subsequently, a Shanghai-based lab analysed the new virus and the genome sequence was shared on 12 January with the World Health Organization. Subsequently, this allowed numerous countries to develop PCR-based tests to screen for the new virus. On 23 January, Wuhan, with a population of around 11 million, was quarantined when there were officially only around 300 detected infections and seventeen deaths. In quick succession, the Chinese government closed the surrounding Hubei province (50 million people) and subsequently enforced a general lockdown of public life, affecting around half of the country's population. This operation amounted to the largest quarantine effort in human history. These policies were officially ended with the reopening of Wuhan city on 8 April.

Crucially, most western observers thought that the Chinese policies would never be applicable to western liberal democracies. The medical emergency was seen as a Chinese or Asian problem rather than a global one. However, not all German reactions to the Chinese efforts were critical of them. In an interesting statement, Professor Christian Drosten, head of the Institute of Virology at Charité Hospital Berlin, who was at this time just emerging as Germany's coronavirus 'explainer-in-chief' and has since become a household name, used a meeting of the Berlin Medical Society to praise China for 'providing the world certainly some more weeks of time based on a heroic epidemiological act'.⁷

In comparison with China, South Korea's response is more attractive to western policy makers because the coronavirus was contained by less authoritarian means. For a short period between late February and mid-March 2020, the country appeared to be in danger of becoming the second virus hotspot after China. However, most of South Korea's infections occurred in two regional places and many were related to members of a religious group whose services had served as incubators. The two outbreaks were discovered at the same time, after which all group members were tested for the virus. This particular event made South Korea's crisis appear more critical than was really the case. As previously in China, the South Korean government applied ICT-based surveillance of citizens' smart phones to monitor the spread of the coronavirus, but unlike China, a general lockdown of public life was avoided: 'Korea is the only country with a population of over 50 million that has slowed the spread of the virus, and flattened the curve of new infections without shutting down the country nor the city at the epicenter of the outbreak, without imposing extreme personal travel or movement restrictions, and without closing airports or taking other authoritarian actions'.⁸

In terms of policy, South Korea has highlighted the use of combined 'track, trace and treat' based on easy access to testing facilities, quick transmission of results and rapid hospitalisation of those needing medical treatment. If tested positive, virus-affected people are placed in four different treatment

categories, depending on the severity of symptoms, and placed in 'living and treatment support centers' or various specialised hospitals. Those in close social contact with infected people are in turn subjected to testing and/or are asked to engage in two weeks of self-quarantine. Once quarantined, people must use their smart phones to transmit twice-daily self-examinations, answering four questions about whether or not they have developed symptoms. If people report any symptoms, they are immediately connected to telemedicine facilities and specialised hospitals. Moreover, citizens' compliance with their home quarantine is also monitored through smartphone tracking, and civil servants are required to check on people's whereabouts if there are any gaps in reporting.

The Korean government stresses that 'ICT helps social distancing'. However, this depends on 'multi-agency coordination under a central platform', which is in turn facilitated by previous legislation such as the Infectious Disease Control and Prevention Act. The scope of this legislation was expanded in response to the 2015 MERS outbreak in South Korea and allows access to patient statements and 'personal information through location tracking, [credit] card transactions, and CCTV recordings for accurate tracing'.⁹ It further allows the police to request information, without a warrant, on people who are 'likely' to pose a potential infectious risk from a large variety of institutions such as 'medical institutions, pharmacies, corporations, organizations, and individuals'.¹⁰

Although western, and particularly German policy makers, have become keen on copying the South Korean use of ICT and smart phones to monitor coronavirus transmissions, they arguably put the cart before the horse. In particular, South Korean citizens have long accepted ubiquitous smartphone use to access public services in general, and the health system in particular. Moreover, they generally accept that their data privacy is suspended for the duration of a pandemic. Such preconditions are absent in the German case, where the general public is unlikely to cooperate with smartphone-based monitoring of mobility and personal contact patterns to the extent that would be

required to make an app useful, and any efforts of public authorities to enforce compliance with a new monitoring system would be likely to trigger a substantial backlash. Data protection and civil liberties aside, the German ICT infrastructure is not developed enough to allow for the speedy introduction of a coronavirus app.

German responses to the coronavirus pandemic

Throughout February 2020, German politicians and the general public were largely ignorant about the potential severity of the coronavirus threat. At this time, the German health minister Jens Spahn assured the public that the situation was under control and that Germany was well equipped to deal with any crisis. That not all was well first became apparent with the occasional mentioning in the media of an acute shortage of protective masks. In early 2020, Germany had responded positively to the Chinese government's request to purchase the existing stock of masks and other personal protective equipment. Any existing German stock of such materials had usually been imported from China and was now re-exported on the understanding that China required the protective kit more urgently. Shortly after, Germany introduced an export block on masks and protective gear in response to Italian and Swiss requests to purchase such materials from Germany. It now became apparent that Germany in fact was running short of supplies. This general shortage of access to basic protective materials subsequently became a permanent feature of Germany's coronavirus crisis.

In early March, the sudden announcement of the closure of public life in Italy, accompanied by the chaotic flight of Italians from their northern Italian jobs to their southern Italian homes, brought home the message that Europe would not escape the pandemic. The decisive step to raise Germany's public awareness of the crisis was Chancellor Angela Merkel's press conference on 11 March 2020 in which she declared that 'experts' believed that 60 to 70 per cent of Germans would at some point or other be infected with Covid-19. Since the pandemic

could not be stopped, the strategic response was to 'slow down the spread of the virus and of infections'.¹¹ Subsequently, this policy approach was referred to as 'flattening the curve' (the English-language term was used in the German debate). After a transition period of some days, a 'lockdown' of public life was introduced in Bavaria on 20 March and in the rest of Germany on 22 March (here too, English was used since the German equivalent *Ausgangssperre* implies a connotation reminding people of war settings). Other significant factors in public acceptance of the lockdown were media reporting about the partial collapse of healthcare facilities in northern Italy owing to the coronavirus crisis, and the parallel emergence of a number of German local virus hotspots such as the city of Heinsberg in North Rhine-Westphalia and a number of locations in Bavaria. Some of these hotspots were, in turn, linked to German holidaymakers who had become infected in neighbouring Austria.

In practical terms, German policy making included the following measures: (1) closure of all non-essential businesses with the exception of food stores, pharmacies and, somehow counterintuitively, flower shops; (2) closure of all schools and universities and most childcare provision; (3) outlawing of public gatherings; (4) warnings against travel, but without any explicit prohibitions; (5) recommendation to engage in 'social distancing' from others; (6) the cancellation of planned medical procedures in hospitals, refocussing capacity on the coronavirus pandemic; (7) closure of homes for the elderly and care facilities to the public, including the prohibition of visits by family members. Citizens were advised to stay at home and to leave only for essential activities such as food shopping or visits to medical facilities and pharmacies. Overall, the measures were enforced in a 'soft' manner compared with countries such as Spain, Italy, and France, that is, mainly via 'nudging' rather than direct enforcement. A strategy paper commissioned by the Federal Ministry of the Interior suggested encouraging a 'feeling of shock' based on 'primal fear' to achieve voluntary compliance with the measures.¹² Moreover, those deemed essential workers were not covered by the recommendation to stay at home. This concerned workers in the

health services and other parts of the public sector. In practice, it left a grey zone in which many economic activities continued, although the rapid collapse of supply chains and the parallel disappearance of access to export markets effectively closed down most German industries.

Another major reason for the general acceptance of the lockdown was that the government quickly promised economic bail-outs for all sectors of society. The first step was the German parliament's unanimous decision, on 13 March 2020, to allow workers displaced from their employment easier access to the 'short-time work allowance' (*Kurzarbeitergeld*). This policy enables companies to keep workers on the payroll but shifts the wage bill to the national labour office. Significantly, agency and temporary workers were included alongside regular workers. At first sight, this appeared to protect some of the vulnerable groups in the labour market. However, the actual implementation of protective programmes differed from region to region. Many self-employed people discovered that they either did not qualify for assistance or that the funding had already been exhausted. Thus, the underlying problem of the collapse in demand within many economic sectors remains a major threat to small and medium sized enterprises and the self-employed.

Analysing the German case: perspectives of political sociology on policy learning

Considered from the analytical perspective of political sociology, the policies of the German government can be seen within the global and regional context of a 'risk community' as not differing fundamentally from those of most other EU countries. In particular, decisions of neighbouring countries such as Austria with regard to border closures, social distancing and efforts to 'flatten the curve' meant that Germany would be forced to follow the general drift of events. Moreover, keeping Germany's economy open—by selecting a more nuanced and targeted approach along South Korean lines, or a more voluntary one along Swedish lines—was not a

realistic option because of the country's dependency on global and EU-based supply chains that were already collapsing following lockdown policies elsewhere.

In terms of Luhmann's 'systems theory', the crisis management of German policy makers can be explained rather elegantly. Crucially, the relationship between the major systems of politics, law and science (for which, under coronavirus conditions, read as 'medicine' and 'infectious epidemiology') had to be simplified radically, asserting the dominance of the political executive, in order to allow for rapid decision making. In terms of the relationship between politics and law, all political measures were declared to be covered by the 'infection protection law' (*Infektionsschutzgesetz*). This particular law was amended and significantly expanded by the federal parliament on 25 March 2020 and came into force on 27 March. The expanded law now overruled various other legislative provisions, including numerous constitutional basic rights. This process ignored the fact that the law had never been expected to cover decisions of such magnitude and, furthermore, failed to answer questions on how the closure of the economy would be dealt with from a legal point of view.

Regarding the relationship between politics and science, Germany's core executive, led by the Chancellor, suggested that 'experts' would advise political decision making. However, this process had to be simplified radically in order to avoid a cacophony of contradictory expert advice. To solve this problem, the number of 'experts' drafted in by the government and presented to the public was initially limited to two academics, namely the above-mentioned Drost and Lothar Wieler, the head of the government-funded Robert Koch-Institute. These two professors—the latter selected owing to his position as head of the Institute rather than because of his academic specialism in veterinary medicine—gained the lion's share of media attention during the early weeks of Germany's lockdown. The purpose of this arrangement can be seen as being in the interest of policy makers in that it simplifies their own leadership roles.

After streamlining the relationship between politics, law and science, the core executive began to downscale the procedures

of political life. The Chancellor and Vice Chancellor (the latter also finance minister) now assumed centre stage. Other Christian Democratic (CDU/CSU) politicians, namely the current contenders for Merkel's succession and the nominal party leaders of the SPD, largely disappeared from sight. What remained in terms of core actors during the coronavirus crisis were government ministers representing the most important portfolios of health, labour, economics and social and family affairs, while the interior minister was for unexplained reasons absent. In terms of German federalism, the relationship between the Berlin-based federal government and the sixteen regions became limited to direct negotiations between the Chancellor and the regional prime ministers. All virus-related policies were now negotiated in this *ad hoc* way, largely bypassing the parliamentary system. Although the federal parliament still conducted sessions, only a handful of representatives attended in person, while the remainder of MPs followed events from their home offices. In this context, the rising dominance of the core executive was accompanied by the rapid decline in the public profile of all four opposition parties (in order of size the AfD, liberal FDP, Left Party and Greens).

Because of the sudden drop from sight of most traditional political actors, policy deliberation now shifted to media venues. This allowed Germany's legacy media (state TV and print newspapers) to regain some of its former clout compared with the digital alternative media. In particular, TV talk shows became important venues for discussing government policy. One of Germany's longstanding talk show hosts stressed in this context that 'this entire [coronavirus] thing is about communication ... what one says, how one says it, with what kind of unity one shows up'.¹³ His subsequent criticism of the political actors—who at this point strongly disagreed about how to introduce a smartphone-based tracing app in Germany—was typical in its attempt to blame policy ambiguity on the absence of effective leadership.

Reacting at least indirectly to this kind of criticism, some politicians in turn started to blame other actors, namely the virologists, for failing to provide clear guidance. Two typical voices in this respect were the prime

minister of North Rhine-Westphalia, Christian Democrat Armin Laschet, and the leader of the liberal FDP opposition party, Christian Lindner. Both used talk show appearances to suggest that the virologists were failing the politicians. The former highlighted that demands on Germany's healthcare system had in fact been much lower than the virologists initially predicted.¹⁴ The latter criticised virologist Drosten for his contradictory statements 'within 24 hours' about how likely it was that children could transmit the virus to adults. (After all, the view that children were potential Covid-19 prime spreaders had earlier motivated the closing down of the entire education system.) Lindner now demanded that the virologists adopt the decision-making format of the Catholic Church in selecting a Pope, namely internal deliberation amongst virologists should precede the issuing of policy advice.

Analysing German policy making during the coronavirus crisis from mid-March to early May 2020 shows that the core executives at the national and regional level succeeded in rapidly concentrating decision-making power at the top of the pyramid. What remained in terms of political opposition during this period was largely limited to the digital media, which continued questioning the government's expertise and policy approach in dealing with virus-related issues. The German core executive's policies mostly amounted to the standard response of EU countries (other than Sweden), namely lockdown, social distancing, efforts to expand hospital capacity and, last but not least, economic subsidies for those suffering from the economic results of the closure of the economy. Such across-the-board application of lockdown policies underscored the point that Germany had learned lessons from China as first responder state. However, this learning occurred in a fairly indirect manner by way of policy diffusion: in mid-March 2020 almost the entire EU rapidly turned to lockdown policies. Being surrounded by other lockdown states, the EU's central country was bound to follow suit.

Nevertheless, this leaves open the possibility that the wrong lessons were learned from China, given the increasing doubt about the utility of full-scale lockdowns compared with the experiences of Sweden, South Korea and

elsewhere. In terms of German learning from South Korea as second responder state, one must point out that many Korean policies overlapped with Chinese ones, namely large-scale virus testing, quick isolation and treatment of people suffering from severe consequences of a coronavirus infection, and ICT-based surveillance of citizens via smartphone apps and other means. What was different about South Korea was that the country stopped short of a full-scale lockdown of the economy. The subsequent fascination of German policy makers with Korean smartphone-based apps to monitor the spread of infections, and the wish to copy them as quickly as possible, only worked to underscore that the country lacks the preconditions for the quick and successful application of such technologies.¹⁵ After all, Germany does not enjoy any autonomy in the ICT field and the population does not consider the state a credible broker when it comes to data security. Critics of the suggested app perceive this technology as an attack on basic civil liberties. They believe that they belong to a larger project of universal surveillance that might also include 'immunity passports', global electronic ID management and enforced digital payment grids. It is obvious that new surveillance technologies raise questions about the protection of civil liberties that cannot be discussed adequately under emergency conditions.

Crucially, the overall track record of recent German emergency policies is open to legitimate questioning. The country was unprepared in terms of the absence of stockpiling of critical resources such as personal protective equipment, and many senior citizens died in care facilities. The crisis also revealed that around 90 per cent of care workers in private households in Germany are East Europeans engaged in a totally unregulated shadow economy. These informal workers were forced to leave the country at short notice owing to the closure of intra-EU national borders.¹⁶ One must suspect that the unintended consequences of ill-conceived measures produced many casualties among senior citizens that were totally unrelated to the virus.

Perhaps the greatest failure was the government's decision to limit its utilisation of expertise to a very small number of hand-

picked experts. This transparent effort to avoid any emergence of 'counter-expertise' produced tunnel vision among decision makers. It should also be noted that many critical interventions during Germany's coronavirus debate came from external experts acting independently from and sometimes against the explicit wishes of the government-favoured Robert Koch-Institute. For example, one pathologist's insistence on conducting autopsies of people dying *with* but probably not *from* coronavirus established that all examined cases of people dying with the virus in the German city state of Hamburg had suffered from at least one but usually a number of pre-existing serious health conditions. Moreover, the average age of the deceased mirrored the average life expectancy.¹⁷ Such external interventions made a major contribution in combatting the feeling of panic and helplessness in German society. This example—one of many—clearly demonstrates that the coronavirus threat cannot vindicate the government's closed style of decision making in recent months.

The public mood finally started to shift in May when concern over the escalating economic costs and ongoing restrictions to constitutional basic rights increasingly entered the public debate. During this month, the reopening of the political process changed the perception of what was going on. In late May, regional prime ministers from the Left Party, CDU, and Greens, all announced in quick succession that they favoured the full reopening of the economy, combined with the shifting of anti-virus activities to the local level for better targeting. At this time, those warning of a 'second [coronavirus] wave' and demanding further lockdown measures appeared increasingly isolated.

Conclusion

The German core executive began coronavirus crisis management in March 2020 by promising citizens protection from viral risk. In order to deliver on this promise, the 'precautionary principle' was frequently referenced. However, the practical experience demonstrated that reducing risk in one area increased risk in others. Ulrich Beck's observation from 2008 deserves to be quoted at length here:

Given their task of averting dangers, politicians, in particular, may easily find themselves compelled to proclaim that the observance of security standards is assured even though such guarantees are impossible. They do so nonetheless because the *political* costs of omission are much higher than those of an overreaction. It is not going to be easy in future, therefore, given the state's promise of security and a mass media hungry for catastrophes, to prevent a diabolical power game with the hysteria of non-knowing.¹⁸

During the coronavirus crisis, the core executive decided what kind of risk was to be singled out and dealt with. Since there are always many risks, the act of selecting which risk to deal with is the moment of *raison d'état*.

What follows from this observation is that it is almost impossible to judge whether German politicians were successful or otherwise in their emergency activities. Any possible answer to this question depends on what kind of risk and timeframe is looked at. For a start, data on the coronavirus crisis is unreliable and statistical references have been used in an arbitrary manner.¹⁹ Since every country had its own way of defining and counting the victims of coronavirus, subsequent cross-country comparison often measures factors that are not necessarily virus related. The only conclusion that one can state with confidence is that pandemics mercilessly expose shortcomings of social integration. Thus, rather than dwelling on medical issues, one must instead ask political questions. Most critical is, of course, who wins and who loses because of the coronavirus crisis *and* subsequent crisis measures. The promise to avoid risk for everyone is something that the political system ultimately cannot deliver on.

One particularly significant follow-up risk of the initial coronavirus measures concerns the future relationship between the political and the legal systems. Since the political system applied emergency measures that harmed certain sectors more than others—and in totally unforeseeable ways—this imposition of arbitrary losses inevitably triggers demands for economic bailouts. After imposing arbitrary losses, the political system is now tempted—whether because of lobbying and/or genuine good intentions—

to deliver 'help' that might end up amounting to arbitrary gains for some but not others. Under these conditions of proliferating arbitrary acts, the ability of the legal system to guarantee predictable and binding rules for public life is certainly in serious doubt. Thus, there might be more risk for everyone and less trust between citizens and public authorities in the period ahead.

Notes

- 1 U. Beck, *World at Risk*, translated by C. Cronin, Cambridge, Polity Press, 2007.
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